

MINUTES

Highway Expansion and Extension Loan Program

Advisory Committee Meeting

November 2, 1998

Committee Members attending:

Mary Peters, Director ADOT
Bruce Hilby, Phoenix
Gary Magrino, Yuma
Jeff Martin, Mesa

Cliff Potts, Payson
Paul Schwartz, Sun City
Tami Ryall, Gilbert

Others Present:

Laurie Woodall, Asst. Atty. General
Charles "Chuck" Eaton, ADOT
John McGee, ADOT
Sabra Mousavi, ADOT
Kurt Fruend, Dain Rauscher

Suzanne Sale, CFO, ADOT
Tim Ahrens, ADOT
Ellen Damron, ADOT
Lloyd Pepperll, Dain Rauscher
Evamae Nye, ADOT

Call to Order and Opening Remarks

Chairperson Mary Peters called the first meeting of the Committee to order at 2:10 p.m., November 2, 1998 at the Arizona Department of Transportation, 206 S. 17th Avenue, Phoenix, Arizona. Ms. Peters welcomed the Committee, and gave a brief overview of the Highway Expansion and Extension Loan Program established under HB 2488. Committee members, the Assistant Attorney General, members of staff and public introduced themselves.

The Chairperson stated that there would be an opportunity for the public to address items on the agenda.

Organizational Matters

Suzanne Sale reviewed the Committee's statutory responsibilities, and addressed organizational issues relative to the Committee's status as a public body.

It was noted that HB 2488 became effective August 21, 1998, and provided for a seven-member Committee to oversee the Highway Expansion and Extension Loan Program and make recommendations to the State Transportation Board.

The law provided for two members of the public appointed by the Senate, two members of the public appointed by the House of Representatives, and two appointed by the Governor. The ADOT Director or designee serves as Chairman. The appointments have staggered terms.

The Committee's responsibilities were reviewed. It was noted that the Department of Transportation provides staff for the Committee. The Committee is not eligible for compensation, but is eligible for reimbursement for expenses. Guidelines and forms will be sent to each Committee member to report their expenses.

The Advisory Committee is subject to the Open Meeting Law, and a loyalty oath is required of each Committee member. (Signing of the Loyalty Oath by each member was completed at the end of the meeting.)

The Chair recognized Laurie Woodall, Assistant Attorney General, who reviewed provisions of the Open Meeting Law. (Section #4 of the handbook.)

Ms. Woodall first addressed the issue of the appointees' staggered terms. Some of the members were appointed for a longer period of time. She reported that there are two ways that the decision could have been made. The appointing entities could decide, or as a body the Committee could have met and determined it as a group. For this Committee, the appointing bodies made that decision. Either method is acceptable under in Arizona Law.

Ms. Woodall reviewed the stipulations of the Open Meeting. She stressed that "the public's business must be done in public" and that there cannot be anything discussed that is not on the agenda. For each meeting an agenda will be prepared and posted in the lobby at the State Capitol and in the lobby of the Arizona Department of Transportation. Posting must be 24 hours before the meeting.

Committee members should not discuss any matter on which there may be deliberations or discussion as part of this Committee outside of the public meetings.

Technically, if less than a quorum meets to talk about matters likely to come before the Committee, it could be argued that there is actually no meeting. However, Ms. Woodall strongly suggested that Committee members not talk to each other regarding business matters relating to the work on the Committee unless members are at the public meeting. She said that the Attorney General's Office has become very aggressive in citing people for violations of the Open Meeting Law. She encouraged the Committee members to read the booklet provided.

Exceptions to the Open Meeting Law were also discussed. i.e. Executive Session. When an Executive Session is called, the public is required to leave and only the members of the Committee and their support staff can remain to discuss a matter in private or seek legal advice. Ms. Woodall stated that the Committee cannot reach a collective decision or take a vote in Executive Session. This is only an opportunity for discussion.

Ms. Woodall offered that it is very important that advance notice be given to staff on any issue to be discussed or for a request for legal counsel so that it can be placed on the agenda.

Ms. Woodall referenced the other booklet provided in Section #4 of the Committee's handbook, which covers law as it pertains to public officers. Ms. Woodall noted particularly the information on conflict of interest, which is probably the one most misunderstood. It is not illegal to have a conflict of interest, but it is illegal to fail to declare it. If a Committee member or any family member has an interest in an issue being discussed or voted upon, the Committee member should refrain from the discussion and abstain in any voting. The conflict of interest excerpts are in the booklet provided.

Ms. Woodall indicated that she would be available to answer questions after the Committee members have an opportunity to review the information, or if an issue surfaces later, she could be contacted through Suzanne Sale.

It was noted that there is a good video presentation by the Solicitor General on the Open Meeting Law, which was shown on the Channel 8 Horizon program. The Attorney General's Office may have this available for viewing at a later date.

Mr. Martin posed a question regarding the Open Meeting Law as it relates to a discussion of an issue or agenda item between two people on a public council or committee. Ms. Woodall stated that while the Open Meeting Law addresses quorum, there is a way that public bodies have a tendency to circumvent the Open Meeting Law by means of talking one-on-one and then passing the information from one member to another member of the Committee or Board etc. By communicating one-on-one members may arrive at a consensus and that is where the problem lies. Ms. Woodall cautioned that her office has taken a legal position that this is not proper and a circumvention of the Open Meeting Law. If it is not done for that purpose, there is nothing wrong with Committee members conversing, because it is obvious there are times when information needs to be conveyed between members.

Mr. Martin questioned the terms of office. Ms. Woodall stated that she had done some legal research, and that her office had previously issued a formal opinion in 1992 concerning a similar situation. While the statute is not precisely the same as this one, her office did opine that either method would be appropriate. Each

of appointing bodies had determined terms. A copy of the information will be provided to the Committee.

Ms. Sale addressed the issue of a community interested in obtaining financial assistance for a future project coming before the Committee to make a formal presentation. Ms. Woodall stated that as long as it is in that context that there would not be a problem.

Ms. Sale also discussed communications between the Advisory Committee and staff. Ms Woodall stated that the only issue of concern would be if the staff member was being used as a conduit to communicate information to other Committee members on a position. She emphasized that there is not a problem with Committee members requesting information from Department staff.

Ms. Peters offered that the Committee should be aware of these issues as they proceed with their work, but not to be so concerned that the Committee feels constrained.

The Committee voted on what they considered a quorum. The two options were as follows:

- 1) A simple majority;
- 2) Two thirds of the membership

The Chairperson would vote only in the case of a tie.

Ms. Peters reported that it has been her experience in small groups that a simple majority generally works better. If the Committee decides on a two-thirds membership quorum, then it sometimes becomes difficult to call a meeting.

The Chair called for a motion. Jeff Martin moved that a simple majority would constitute a quorum for this Committee to do its business. Mr. Schwartz seconded the motion. The motion carried unanimously.

Ms. Woodall addressed the Chair to ask whether the Committee would also want to adopt Robert's Rules of Order.

Ms. Peters entertained a motion. Mr. Magrino moved to adopt Roberts Rules of Order and Mr. Schwartz seconded the motion. The motion carried unanimously.

Ms. Peters posed a question regarding Mr. Martin and Ms. Ryall both being public employees, since they have the opportunity to work together on a variety of issues that may deal with legislation possibly affecting the HELP program in the future. She opined that she did not see this as an issue. If other Committee members were asked to testify or give an opinion on proposed legislation, Ms. Peters did not see this as an issue. Ms. Woodall concurred.

Mary Peters stated that there are occasions when a meeting is called and a member is not able to attend in person. State Transportation Board members, as an example, are allowed to participate by telephone. The public notice is posted and the public is able to listen. Mary entertained a motion that the Committee would allow telephonic meetings. Mr. Potts so moved, and Mr. Martin seconded the motion. The motion passed unanimously.

Overview of the SIB Program

Ms. Sale presented a high level overview of the key provisions of the Highway Expansion and Extension Loan Program.

Ms. Sale noted the uniqueness of the program in the flexibility provided at the federal level. Each state is implementing the State Infrastructure Bank (SIB) in a slightly different way. California currently is using their bank only for credit enhancement programs; Texas is using it to provide assistance for toll projects; Missouri has established their bank under a non-profit structure.

The program can be tailored to meet a state's specific needs. Ms. Sale noted the following relates to the SIB/HELP program.

- It is new in transportation
- It is a revolving fund concept
- It can be capitalized with a variety of funding sources
- It offers a menu of various types financial assistance
- It is a mechanism that allows the Department to build up capacity for funding transportation improvements over time
- The state treasurer invests the funds
- ADOT Financial Management Services provides staff support

Suzanne explained how the Department launched the program in Arizona and where we are today.

Jeff Martin expressed Mesa's appreciation to the staff of ADOT for the leadership on this funding mechanism. He noted that approximately eight months to one year was spent drafting an agreement that he hoped may be used by other cities in developing agreements with the Department to advance projects under this program. He added that this funding mechanism is a powerful financial tool.

Tami Ryall inquired about leveraging the funds, rather than having to fully capitalize the bank. Suzanne responded that it may be possible to leverage the \$50 million federal dollars in the bank to approximately \$200 million in bonding capacity. Kurt Freund, Dain Rauscher, suggested that the leveraging capacity is usually three to five times the amount.

Suzanne reported that there are other tools that the State Transportation Board will be considering to complement the State Infrastructure Bank. Grant Anticipation Notes (GANs) are one of the new tools, which will be addressed at a future meeting.

Mary Peters recognized that most of the Committee members have been involved in transportation issues. Ms. Peters stated that this program gives us one option for advancing transportation projects, and with the continued success of this program, under the leadership of the Committee, it may be possible to pursue leveraging capabilities.

Mr. Hilby noted the diverse geographical localities of the Advisory Committee members. He asked as to what extent that the Committee is expected, discouraged, encouraged to be advocating projects in the Committee jurisdictions. Mary Peters responded that the Committee should have a statewide perspective. It was noted that the Committee appointments were made taking into consideration the members' demonstrated knowledge of transportation issues. Again, she emphasized that that the benefits should be considered statewide, but if there are projects in the respective region that would be eligible, they should be brought forward.

Mr. Hilby responded that in that regard the members probably need to have "exparte" meetings with people in their own jurisdictions to understand their needs.

Mr. Schwartz asked for clarification of Mr. Martin's comments regarding the funding requested from the legislature that was turned down this year. Mr. Martin responded that the first approach was to capitalize the bank with state General Fund monies. A new approach is being discussed using monies invested by the State Treasurer. It was mentioned that the Governor's staff developed this strategy.

Currently, the state treasurer invests the available general fund monies in government treasuries. With the proposed revised legislation, rather than investing in government treasuries, the State Treasurer would be investing in the loans so that the money would be staying in Arizona and benefiting the economy. The interest paid on the loans by local jurisdictions would be retained for the benefit of the General Fund.

The Implementation Plan Development

Suzanne Sale highlighted implementation steps taken to date.

1) Preliminary loan parameters have been developed. These were used to determine the interest rates on the two pilot loans. Public Financial Management, a nationally recognized firm in the financial area, was brought in to help develop the initial guidelines. The tax exempt interest rates are set at 70% for a 1 to 4 year loan and 75% for five to ten year loans. This may need to be revisited. It will be the decision of the Advisory Committee to make recommendations to the Board on how to establish the loan rate.

Various options are available to the Committee:

⇒ Ask staff to report back to the Committee with a recommendation; or

⇒ The Committee could request staff for various options.

Mary Peters asked that the Committee express their preference on whether they would like to have input on various options or have staff come back with specific recommendations.

2) The next area addressed was the establishment of project selection criteria. State and local governments, legislative staff, and financial staff were invited to participate in a comprehensive workshop in January 1998 to gather input for development of the criteria. The product of the workshop was a draft framework for project selection criteria. Ms. Sale suggested that the selection criteria be addressed at the next meeting in more detail. She noted that this particular document could be used as a starting point for determining the selection criteria to apply to applications submitted for financial assistance. It was noted that the draft criteria parallel the requirements in statute. (i.e. financial considerations; degree of economic benefits; impact on air quality; impact on safety.)

Mary Peters requested that specific recommendations be prepared for the next meeting and be sent in advance for the committee's review.

Ms. Sale noted the following tasks to be completed by the committee:

⇒ Review of the selection criteria

⇒ Review of the rough draft of the application for recommendation;

⇒ Policy decisions i.e. frequency of the committee seeking applications for financial assistance. (Once a year, rolling basis, etc.)

⇒ Whether the application package should be put on the ADOT Web site.

Suzanne said that a draft application package would be brought back to the Committee at the next meeting. She asked for any guidance or input the Committee may have in this regard. She also noted the document package developed by Ohio and Oregon and their availability on a Web site.

The Chair suggested that it might be helpful if the Committee would be given some idea on what the universe of potential of applicants might be (i.e. type of projects and where they may be generated)

Since the State Transportation Board has final approval of any projects, Mary Peters requested that the Board be apprised of the draft application package and criteria so that they are ultimately comfortable with the applications that come forward to them.

It was reported at this time that there are no specific projects awaiting assistance, but there have been some discussions with local governments of potential projects.

Tami Ryall asked if it would make sense to have the application process “trigger” after the adoption of the Transportation Improvement Plan (TIP). She suggested that the January timeline for application approval would bring everything in at once. Ms. Sale agreed that this is a policy issue, and suggested that there is some room for interpretation as to whether it has to be part of the TIP or construction program before a loan is approved or can the TIP or Five-Year Construction Program be amended once if the loan is approved. Mary Peters suggested maximum flexibility be allowed.

Mr. Potts requested some background information on the acronyms. A glossary will be sent to the Committee, as well as some background information on the TIP and the Highway User Revenue Fund (HURF).

Suzanne Sale said that if the Committee determines that it would be appropriate for applications to start coming in during the January time frame, decisions on loan awards could be made by May at the latest. Since the program is not finalized until June, there would be an opportunity to put it in the State Highway Program. Mary said that the basic intent of the program is to fund high priority projects.

Mr. Hilby inquired whether information on the existence of the Advisory Committee is being disseminated to the various administrations of the smaller cities and towns in the state. Ms. Sale said that she would see that the local governments are included on our mailing lists. There has been extensive outreach at the “Gathering” meetings throughout the state, which involve the various MPO's, COGs, and ADOT. Various civic groups have asked ADOT to provide an overview of the program. A marketing brochure may be developed

Mr. Hilby requested that a letter, not just an agenda, be sent out to the cities and towns to get input as to what they might like to see relative to the program.

Ms. Sale stated that she would provide the committee with the names of those people who participated in the workshop. Ms. Peters also suggested that the County Supervisors and the League of Cities be informed.

Mary Peters recapped agenda items for the next meeting:

- 1) Recommendations for the application form and the criteria under which projects will be evaluated and selected;
- 2) Recommendations for Policies and Procedures
- 3) Outreach Program
- 4) Primer on the Transportation Improvement Program and possibly the Five-Year Program.
- 5) The MAG guidelines and how the interest is shared and the reasoning behind this. (A handout on this was agreed upon)
- 6) HURF (It was agreed that a handout on the HURF would be sufficient.)

It was suggested by Ms. Sale that a consultant be brought in to work with ADOT and the Committee to help draft policy and procedures.

Mary Peters stated that she would like to see maximum flexibility in the guidelines, but also that the integrity of the program protected.

Call to the Public

No comments.

Future Agenda and Next Meeting

Some policy issues that need to be addressed:

- General Policies and Procedures
- Internal Policies and Procedures relative to the management of the loan program
- Minimum size of a loan
- Can loans be made for any phase of a project

- Should the loans be made available for feasibility studies or only for construction, right of way or design phase of projects
- Should money be made available for studies
- Should there be a minimum loan amount
- Should there be a set aside for small projects statewide

Some of these issues and the background rationale will be presented for the Committee's consideration before the application package can be finalized. These policies have to be approved by the State Transportation Board for final adoption.

Mary Peters asked Suzanne Sale to brief the Board on the progress of this Committee.

The Chair suggested that staff come back to the Committee with a matrix of options with a specific recommendation. Ms. Peters called for input from the Committee on this issue. Mr. Potts requested staff come back to the Committee with the matrix of options; Ms. Ryall concurred.

Ms. Sale stated that a draft Progress Report is due to the legislature December 1. It was agreed that the draft Progress Report could be sent to the Committee and action could be taken by conference call. Ms. Peters suggested that this would be appropriate. The draft will be available by November 20. The Committee set the call for November 24, 1998 at 2 - 3 p.m. to discuss the draft report

Next meeting December 1, 1998 at 1 p.m. in the State Transportation Board Room, 206 S. 17th Avenue, Phoenix, Arizona.

Mr. Magrino requested an agenda item at a later date regarding methodology on paybacks and actions that can be done to maximize cash flow.

Adjournment

Meeting adjourned 4 p.m.